

Maine Revised Statutes
Title 36: TAXATION
Chapter 827: WITHHOLDING OF TAX

§5250-A. WITHHOLDING ON SALES OF REAL ESTATE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Consideration" means the total price or amount paid, or required to be paid, for real property valued in money, whether received in money or otherwise and includes the amount of any mortgage, lien or encumbrance on the real property. [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF).]

B. "Real estate escrow person" means any of the following persons involved in a real estate transaction in the following order of priority:

- (1) The person, including any attorney, escrow company or title company, responsible for closing the transaction;
- (2) The mortgage lender;
- (3) The seller's broker;
- (4) The buyer's broker; and
- (5) Any other person who receives and disburses the consideration or value for the interest or property conveyed. [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF).]

C. "Resident," when used in reference to an individual, estate or trust, means an individual, estate or trust that has established a domicile in the State as of the date of transfer of the Maine real property, or that was a resident for purposes of the previous income tax year, unless the individual, estate or trust has established a domicile outside of the State as of the date of transfer of the Maine real property. "Resident," when used in reference to a corporation, means a corporation that, as of the date of transfer of the Maine real property, is incorporated in the State or maintains a permanent place of business in the State. "Resident," when used in reference to a partnership, means a partnership at least 75% of whose ownership interest, as of the date of the transfer of Maine real property, is held by residents of this State. [1991, c. 621, §1 (AMD).]

[1991, c. 621, §1 (AMD) .]

2. Withholding required. Every buyer of real property located in Maine must withhold a withholding tax equal to 2 1/2% of the consideration. The withholding required by this section must be transmitted to the State Tax Assessor within 30 days of the date of transfer of the property unless the State Tax Assessor authorizes the buyer to release the amount withheld, or a portion of it, to the seller. Any buyer who fails to withhold the tax is personally liable for the tax.

[1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF) .]

3. Exceptions. A buyer is not required to withhold the tax imposed by this section if:

A. The seller furnishes to the buyer a certificate by the seller stating, under penalty of perjury, that as of the date of transfer the seller is a resident of the State; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF).]

B. The seller or the buyer has received from the State Tax Assessor a certificate stating that no tax is due on the gain from the transfer or that the seller has provided adequate security to cover the liability; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF).]

C. The consideration for the property is less than \$50,000; [1995, c. 639, §25 (AMD).]

D. Written notification of the withholding requirements of this section has not been provided to the buyer; or [1995, c. 639, §25 (AMD).]

E. The seller is the State or an agency or a political subdivision of the State, the Federal Government or an agency of the Federal Government, an organization exempt from income taxes pursuant to the Code, Section 501(a), an insurance company exempt from the tax imposed by this Part or a business entity referred to in Title 24-A, section 1157, subsection 5, paragraph B, subparagraph (1) that is exempt from the tax imposed by this Part. [1995, c. 639, §26 (NEW).]

[1995, c. 639, §§25, 26 (AMD) .]

3-A. Foreclosure sales; transfers in lieu of foreclosure. No tax is required to be withheld pursuant to this section by a buyer at a foreclosure sale when the consideration paid does not exceed the debt secured by the property held by a mortgagee or lienholder; if the consideration paid does exceed the secured debt, the amount of tax withheld pursuant to this section must be the lesser of the surplus over the secured debt or the amount otherwise required to be withheld by this section. When a mortgagor conveys the mortgaged property to a mortgagee in lieu of foreclosure and with no additional consideration, the mortgagee is not required to withhold tax pursuant to this section.

[1991, c. 621, §2 (NEW) .]

4. Reduced amount. At the request of the buyer or the seller, the State Tax Assessor may prescribe a reduced amount to be withheld under this section if the State Tax Assessor determines that the reduced amount will not jeopardize the collection of the tax imposed by this Part.

[1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF) .]

5. False certificate. If a buyer has actual knowledge that a certificate furnished under subsection 3 is false and the buyer fails to withhold the prescribed amount, the buyer is liable for the amount that should have been withheld and any applicable interest and penalty.

[1991, c. 621, §3 (AMD) .]

6. Joint sellers. In the case of joint sellers, if any of the exceptions listed in subsection 3 apply to some but not all of the sellers, the buyer must withhold and remit the tax as if none of the sellers were entitled to an exception, unless at the time of closing the buyer receives a statement signed by all the sellers allocating the

gross proceeds among the sellers. In such cases the buyer must allocate the withholding tax according to the proportions set out in that statement, account separately for the amount withheld from each seller and apply any applicable exceptions in subsection 3 to each seller.

[1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF) .]

7. Joint buyers. In the case of joint buyers, the obligations and tax imposed by this section apply jointly and severally to each buyer.

[1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF) .]

8. Fee for withholding. It is unlawful for any real estate escrow person to charge any customer for complying with the requirements of this section, unless the real estate escrow person withholds and remits an amount to the State Tax Assessor under this section. If the real estate escrow person is instructed by the parties to withhold under this section and the real estate escrow person remits a withholding amount to the State Tax Assessor, it is unlawful for the fee to exceed \$25.

[1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF) .]

9. Liability of real estate escrow person. Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person is liable for the withholding tax when written notification of the withholding requirements of this section is not provided to the buyer and the disposition of Maine real property is subject to withholding under this section. The real estate escrow person is not liable under this subsection if the tax due as a result of the disposition of Maine real property is paid by the original or extended due date of the seller's return for the taxable year in which the disposition occurred.

[1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. Y, §2 (NEW); 1991, c. 528, Pt. Y, §3 (AFF); 1991, c. 591, Pt. Y, §2 (NEW); 1991, c. 591, Pt. Y, §3 (AFF) .]

10. Application of withholding. The amount withheld pursuant to this section is deemed to be a payment against the tax imposed by this Part on income received by the seller.

[1991, c. 621, §4 (NEW) .]

SECTION HISTORY

1991, c. 528, §Y2 (NEW). 1991, c. 528, §§Y3,RRR (AFF). 1991, c. 591, §Y2 (NEW). 1991, c. 591, §Y3 (AFF). 1991, c. 621, §§1-4 (AMD). 1995, c. 639, §§25,26 (AMD).

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